

## **Implementing ORS 468B.039 relating to methodology for assessing quality of waters of the state**

### **Background:**

During the 2015 Oregon legislative session, Oregon Forest Industries Council, Oregon Farm Bureau, and Associated Oregon Industries sponsored SB 829 relating to DEQ's methodology for assessing water quality. The sponsors proposed the legislation originated due to concerns related to DEQ's development and use of a numeric benchmark to apply the narrative criteria for biocriteria to assess waters for the 2010 303(d) list. These groups had also been actively engaged in DEQ's subsequent TMDL process to address biocriteria listings in the Mid Coast basin which had been underway for several years. Sponsors and other stakeholders raised issues around the process DEQ used to develop quantitative threshold levels for assessment decisions, the perception of the lack of transparency in the process, and the desire for an opportunity for public involvement in developing methods prior to their use in both the 303(d)/305(b) assessment and in ongoing TMDL development. Bill sponsors asserted that the application of narrative criteria through an assessment methodology is a policy decision and **policy decisions should be made by the EQC**. The initial proposed legislation would have required the assessment methods be adopted as a rule by EQC.

In further discussion with bill sponsors and stakeholders (including Oregon Association of Clean Water Agencies, League of Women Voters, Oregon Environmental Council, League of Oregon Cities, and Special Districts Association) the following objectives for the legislation were identified:

- Create opportunity for meaningful public engagement in the development and application of assessment methods
- Obtain independent scientific/technical input on methods used to assess waters as outlined in the final legislation

### **Implementing the Statute**

The end results of these discussions were statutory requirements for procedures DEQ must follow to develop methodologies for assessing waters of the state. To meet these requirements, DEQ will:

#### **1. Solicit scientific/technical input including scientific peer review when appropriate prior to publishing draft assessments of waterbodies**

DEQ expects that it will use scientific and peer review when developing new or significantly revised methods to implement narrative standards, to evaluate new types of pollutant data and information, or to significantly modify methods to incorporate improvements in scientific or technical understanding of environmental data and information.

This will result in

- the evaluation and validation of viable scientific and technical approaches,

- identification of scientific gaps and uncertainties as well as an evaluation of approaches to address those gaps or uncertainties,
- Consideration of recommendations regarding suitability of applying methods reviewed, based on available data sets (i.e., are existing data sets relevant or adequate for method application), and
- improved transparency regarding DEQ's rationale for using a method.

**2. Publish the draft Assessment Methodology for public comment prior to development of the draft assessment conclusions**

This will provide an opportunity for interested parties to raise concerns, identify alternative approaches, highlight gaps (including types of data/information not addressed) prior to DEQ's use of the methodologies to publish draft assessments.

**3. Provide an informational overview for EQC of the draft Assessment Methodology following the public comment period on the draft Assessment Methodology and prior to DEQ completing and publishing the draft assessment. The overview will describe the scope of the assessment effort, summarize key issues raised through scientific review and public comment related to the Assessment Methodology, and describe how DEQ will address those issues. This EQC meeting will include an opportunity for public testimony related to the draft Assessment Methodology.**

This will provide

- EQC policy-makers with an overview of DEQ's efforts, perspectives expressed during method development, explanation of how DEQ considered those perspectives and why DEQ has selected the methods it is using.
- An opportunity for stakeholders to express concerns
- EQC an opportunity to express direction to Agency
- If the EQC or DEQ identify a policy revision or clarification need that is best contained in water quality standards, such revisions can be referred to the standards review process.

DEQ anticipates that the initial presentation to the EQC will be more in-depth, including background information, the scope of the improvement efforts undertaken over the preceding years, and how it is approaching the implementation of the statutory requirements, since this will be the first implementation of the process required by the statute. In subsequent iterations, DEQ would focus its presentation to the commission on its efforts to develop or significantly revise methods.

## **Process for filtering assessment methodologies and revisions to determine whether scientific or technical input or peer review is appropriate**

An **assessment methodology** for purposes of this memo is a set of methods, protocols, procedures, and logical evaluation steps used to apply Oregon's water quality standards to data and information assembled and used to assess water quality and the support of applicable beneficial uses in Oregon waters. Some aspects of the methodologies are general and common across all parameters, data, and information. Other aspects are specific to particular kinds of data, information, monitoring results, pollutant parameters, numeric or narrative standards, or beneficial uses of water.

If the methodology is new or significantly different\* than existing methods, **and** one or more of the following is true, DEQ would conduct scientific or technical peer review, as appropriate:

1. The methodology would implement Oregon's narrative standards through other available state or federal agency numeric standards, use of new methods, or use of established scientific numeric benchmarks;
2. The new or significantly different method would apply a narrative criteria and would require development of significant scientific components that have not been used for assessment purposes before; or
3. The method would use new procedures to incorporate new scientific understanding or advances in scientific procedures.

If any of the following are true, DEQ would not view the method revisions to be appropriate for scientific or technical peer review:

1. The methodology is based on a general standard of practice for assessment methods, or otherwise based on an approach for which DEQ does not have discretion;
2. The method is not being revised or the revisions are minor in nature; or
3. There is only one approach DEQ could take to apply a particular method to meet legal requirements and for assessment to be approved by EPA.
4. The method changes are necessary to accommodate new reporting formats or data systems which DEQ is required to use for reporting to EPA

If DEQ receives data which does not have a previously established methodology and concludes that the data must be evaluated to meet legal requirements, DEQ will evaluate an approach for these **one-time or limited data situations** on a case-by-case basis.

\*DEQ **would not** consider the following types of revisions to be "new or significantly different":

- General application of basic scientific protocols and procedures (Examples – rounding, counting, significant figures, basic mathematical or statistical functions )
- Minor revisions, procedural clarifications, update due to new or revised water quality standards that are not different in form or expression

May 5, 2017

## **ORS 468B.039. Procedures for developing methodologies for assessment of water quality**

**(1) The Department of Environmental Quality shall follow the procedures set forth in subsection (2) of this section:**

**(a) When developing or selecting among methodologies for the assessment of waters of the state pursuant to sections 303(d) and 305(b) of the Federal Water Pollution Control Act (P.L. 92-500), as amended, including, but not limited to, methodologies for applying the numeric and narrative standards of quality and purity for waters of the state adopted by the Environmental Quality Commission by rule under ORS 468B.030, 468B.035 and 468B.048, and any numeric interpretation of narrative standards; and**

**(b) Prior to publishing draft assessments of water bodies based on the methodologies developed or selected under paragraph (a) of this subsection.**

**(2) When carrying out the duties set forth in subsection (1) of this section, the department shall:**

**(a) Solicit independent scientific and technical input, including scientific peer review as appropriate;**

**(b) Provide adequate public notice and an opportunity for public comment on draft assessment methodologies; and**

**(c) Provide an informational overview of the draft assessment methodologies before the commission. The informational overview shall include:**

**(A) A discussion of the scope of the assessment effort; and**

**(B) A summary of key issues raised through scientific and technical review and public comments and a discussion of how the department proposes to address the key issues raised.**

**(3) The commission shall provide an opportunity for public comment on the draft assessment methodologies during the commission meeting described in subsection (2)(c) of this section.**

**(4) Nothing in this section may be interpreted to affect the obligations of the department or the commission under ORS chapter 183 or ORS 468.020.**

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